No. 98-85

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1998

JAMES B. HUNT, JR., *et al.*,

Appellants,

and

ALFRED SMALLWOOD, *et al*,

Appellant-Intervenors,

v.

MARTIN CROMARTIE, *et al.*,

Appellees.

On Appeal from the United States District Court
Eastern District of North Carolina

REPLY BRIEF OF APPELLANT-INTERVENORS

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REPLY BRIEF OF APPELLANT-INTERVENORS

ARGUMENT

I. Appellees Have Not Justified the Grant of Summary Judgment Below

A. Appellees fail to identify record evidence and facts supporting the lower court's grant of summary judgment

Appellees struggle mightily, but ultimately unsuccessfully, to articulate an adequate basis in the record for the lower court's grant of summary judgment in their favor. For instance, they assert that "the shape of the Twelfth District . . . especially when juxtaposed against the race-based Twelfth District of the 1992 plan . . . is strong evidence as to the racial motive for the plan," Appellees' Brief on the Merits ("Br.") at 9, and that the 1997 plan "fails the 'eyeball test,'" Br. at 25. The majority of the court below was not persuaded by these arguments, observing instead that a "comparison of the 1992 District 12 and the present District [12] is of limited value here." Appendix to the Jurisdictional Statement on Behalf of the State of North Carolina ("NC. J.S. App.") at 19a. It is one thing to defend a judgment by presenting an alternative legal theory based upon which the decision may be sustained; it is quite another to pin one's hopes upon an assessment of evidence whose significance was specifically discounted by the court below.

Appellees also baldly ascribe racial motivations to the North Carolina General Assembly for which record support is lacking. *See, e.g.*, Br. at 34-35, describing without any record citation what "legislators were assuming" and alleging, contrary

to the documentary evidence presented by the State in the lower court, that "the General Assembly relied on 'racial stereotypes' and treated a 'significant number' of black voters as 'mere racial statistics.'"[1]

On the other hand, Appellees' attempt to bolster the significance of the few "facts" actually discussed by the court below is highly selective, if not misleading. For example, focusing on the nine "excluded" precincts with majority-Democratic registration cited by the district court, Appellees note that Democratic candidates won 24 of 27 statewide electoral contests in these precincts, sometimes by proportions exceeding their share of registration. Br. at 35-36. However, Appellees provide no data comparing these precincts' partisan registration figures or performance at the polls with those of adjacent precincts that were placed within District 12 – because those data are consistent with the General Assembly's explanation of the districting plan rather than with Appellees' accusations. *See, e.g.*, Brief for United States as *Amicus Curiae* at 25 n.9.

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[1]Appellees' criticisms of the evidence introduced below by the State of North Carolina are similarly ineffectual. For example, they complain that data on political performance examined by the State's expert witness, Dr. Peterson, do not support the conclusion he drew (that partisan voting strength, rather than race, accounted for the placement of precincts within District 12) because of the high proportion of North Carolina's African-American citizens who register as Democrats and vote for Democratic candidates. Br. at 33-34. However, Appellees offer no persuasive evidence to support *their* inference from those data: that race, rather than politics, was the predominant factor in shaping the districting plan. Thus, Appellees' criticism serves only to underscore the inappropriateness of deciding complex questions of legislative motivation on summary judgment.

B. This Court should reject Appellees' request that it change its holdings in order to sustain the judgment below

Perhaps in recognition of these difficulties, Appellees ask this Court to change the legal standard enunciated in *Shaw v. Reno*, 509 U.S. 630 (1993) and applied in subsequent cases – and to adopt now a rule that the Court explicitly declined to announce in *Miller v. Johnson*, 515 U.S. 900 (1995),[2] one that would hold unconstitutional any districting plan in the creation of which race was *a* factor, although not the *predominant* factor. Br. at 19, 20. Citing *Village of Arlington Heights v. Metropolitan Dev. Corp.*, 429 U.S. 252 (1977), Appellees contend that this Court should thus modify the standard announced in *Shaw*, and that review of a remedial plan drawn to cure a prior *Shaw* violation requires a particularly "demanding judicial scrutiny."[3] However, Appellees' arguments are inconsistent with the concern for State interests that underlies the standard of review developed in this Court's *Shaw*

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[2]*See, e.g.*, 515 U.S. at 916 (legislatures "almost always . . . aware of racial demographics but it does not follow that race predominates"); *id.* (other districting principles must be *subordinated* to race) (opinion of the Court); *id.* at 928 (O'Connor, J., concurring); *id.* at 935 (Ginsburg, J., dissenting).

[3]Drawing analogies to school desegregation and criminal due process cases in which evidence was held inadmissible if it is the "fruit" of an unconstitutional search or arrest, Br. at 20, 21, Appellees argue that district courts must assure that remedial plans contain no "'vestiges' of the unconstitutional racial gerrymander" and that "all 'traces' of the earlier predominant racial motive have been rooted out." *Id.* at 22. Appellees assert that they are "entitled to a presumption that 'current disparities are causally related'" to the prior plan and that the burden of rebutting this presumption rests with the defendants. *Id.*

jurisprudence and also conflict with the Court's long-standing precedents in the apportionment context. Moreover, their contentions serve only to highlight the lower court's error in disregarding this Court's precedents when it evaluated the 1997 Remedial Plan.

First, as discussed in Appellant-Intervenors' opening brief, in cases such as this one, this Court requires that the plaintiffs (Appellees here) show that "'race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines,'" *Bush v. Vera*, 517 U.S. 952, 958 (1996), *quoting Miller v. Johnson*, 515 U.S. at 913, and "that other, legitimate districting principles were 'subordinated' to race." *Bush*, 517 U.S. at 959. Thus, it is insufficient for Appellees to show merely that inclusion of African-American voters was one factor influencing the contours of a district in the plan adopted by the legislature – or even that the entire districting process was carried out "with consciousness of race," *Bush*, 517 U.S. at 958. *See also id.* at 993 ("States may intentionally create majority-minority districts and may otherwise take race into consideration, without coming under strict scrutiny. Only if traditional districting criteria are neglected, *and* that neglect is predominantly due to the misuse of race, does strict scrutiny apply") (O'Connor, J., concurring) (emphasis in original); *United States v. Hays*, 515 U.S. 737, 745 (1995) ("We recognized in *Shaw* . . . that the 'legislature always is *aware* of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors. That sort of race

consciousness does not lead inevitably to impermissible race discrimination'") (citation omitted) (emphasis in original); Brief of Appellant-Intervenors at 32-37.[4]

This Court's recognition that legislatures are always aware of race in drawing district lines, and its consequent holding that legislatures may permissibly take race into consideration in that process so long as racial considerations do not predominate, carves out a limited role for federal courts in the redistricting process of States that is effective without being overly intrusive. *See Miller v. Johnson*, 515 U.S. at 915-17. The Court has declined to alter that role when a legislative plan adopted to remedy an earlier constitutionally infirm apportionment is at issue. *See Lawyer v. Department of Justice*, 521 U.S. 567 (1997), *aff'g Scott v. United States*, 920 F. Supp. 1248 (M.D. Fla. 1996). While making unsupported accusations that the North Carolina General Assembly deliberately set out to evade the requirements of this Court's ruling in *Shaw v. Hunt*, 517 U.S. 899 (1996), Appellees have presented no

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[4]Appellees suggest that the legislators "took the position that Shaw applied only to majority-minority districts" and "attempted to comply with *Shaw* even though they created an obviously race-based district. . . ." Br. at 16. The comments of Senator Cooper and Representative McMahan on which Appellees rely, Br. at 14-15, are descriptive of the results of drawing a plan based on partisan political considerations, not of the procedures by which the districts were created. However, the fact that District 12 is not majority-black is relevant to a federal court's determination whether race was a predominant factor in its creation. As this Court stated in *Lawyer v. Department of Justice*, 521 U.S. 567, ___, 117 S. Ct. 2186, 2195 (1997), *aff'g Scott v. United States*, 920 F. Supp. 1248 (M.D. Fla. 1996), "[t]he fact that District 21 under Plan 386 is not a majority black district . . . supports the District Court's finding that the district is not a 'safe' one for black-preferred candidates, but one that 'offers to any candidate, without regard to race, the opportunity' to seek and be elected to office" (citation omitted).

convincing reason why this Court should adopt the standard they describe as the "*Arlington Heights* test," which would bar *any* consideration of race by a legislature enacting a remedial plan and make the scope of federal courts' inquiries into districting processes vastly more intrusive.

Second, Appellees' "fruit of the poisonous tree" argument is also not persuasive, since States are not required to discard completely the original challenged plan before developing a new remedial redistricting plan. As pointed out in our opening brief, Appellees' argument finds no support in *Shaw*, its progeny, or in other cases which define how remedies must be fashioned in voting cases. This Court has consistently accorded great deference to the States' policy choices in the redistricting process and has repeatedly held that the redistricting policy choices of the State should be set aside by a federal court only to the extent necessary to remedy a violation of federal law. *See, e.g., White v. Weiser*, 412 U.S. 783, 795 (1973) (in devising a remedy for a federal constitutional violation, a court "should follow the policies and preferences of the State, expressed in statutory and constitutional provisions or in reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitutions"); *see also Voinovich v. Quilter*, 507 U.S. 146, 156 (1993) ("[F]ederal courts are bound to respect the States' apportionment choices unless those choices contravene federal requirements"). It is not enough for litigants or the federal courts to simply prefer a different redistricting outcome; rather, the State's preferences may be disregarded only to the extent necessary to remedy the violation. Where, as in this case, the State has enacted a new plan that fully remedies the *Shaw* violation and complies with all

applicable federal and state constitutional and statutory provisions, there is no basis for federal judicial interference with its implementation. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978); *see also Shaw v. Hunt*, 517 U.S. at 917 n.9 ("states retain broad discretion in drawing districts to comply with the mandate of § 2") (citing *Voinovich v. Quilter* and *Growe v. Emison*, 507 U.S. 25 (1993)); *Burns v. Richardson*, 384 U.S. 73, 85 (1966) ("A State's freedom of choice to devise substitutes for an apportionment plan found unconstitutional, either as a whole or in part, should not be restricted beyond the clear commands of the Equal Protection Clause"). *See also* Brief of Appellant-Intervenors at 28-31.

Finally, Appellees' analogy to school desegregation jurisprudence is equally unavailing. Unlike the finding of system-wide *de jure* discrimination in the typical school desegregation case, findings of statutory or constitutional violations in apportionment plans often involve only a limited number of districts rather than the entire plan. There is thus no reason to anticipate that there are "vestiges" of racial predominance outside the specific electoral districts held to be invalid.[5] Moreover, Appellees themselves fail to indicate what

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[5]In this case, in addressing the constitutional violation found to exist by the court below in the 1997 Remedial Plan, the General Assembly made changes to the boundaries of only the Twelfth District and five adjacent districts. Although these changes were accepted as a sufficient remedy by the lower court, the court had granted Appellees preliminary injunctive relief enjoining the conduct of *all* of the State's 1998 congressional primaries – including those held in districts unaffected by the violation in the Twelfth District – and dispensing with the State's normal runoff procedures. *See* Defendants' Memorandum in Support of Motion to Reconsider Stay and to Shorten Time for Response, filed April 17, 1998. This injunctive relief was unnecessarily broad because, even having found a discrete constitutional violation, the district court was bound by this

such "vestiges" might be, other than what they characterize as "a clear resemblance . . . between the earlier unconstitutional plan and the remedial plan." Br. at 22.[6] *But see* NC. J.S. App.

Court's precedents to tailor the nature and scope of the remedy to match the nature and scope of the violation. *See, e.g., Lewis v. Casey*, 518 U.S. 343, 357 (1995) ("The remedy must of course be limited to the inadequacy that produced the injury-in-fact that the plaintiff has established") (citation omitted); *Upham v. Seamon*, 456 U.S. 37, 43 (1982) (court's remedy must be limited to curing constitutional and or statutory defect); *Milliken v. Bradley*, 433 U.S. 267, 281-82 (1977) ("federal court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation . . ."). A systemwide remedy is inappropriate absent a finding of a systemwide violation.

The harm to the State's interests, and to political participation in North Carolina, that resulted from the order disrupting the election process by delaying and otherwise altering election schedules is significant and has been frequently recognized by this Court. Altering the State's regular election calendar, conducting congressional elections without statewide races on the ballot, and conducting elections in close proximity to each other all contribute to low voter turnout. *See* Expert Witness Declaration of Bernard N. Grofman, Ph.D. in *Shaw v. Hunt*, July 24, 1996, at 6 (lodged with the Clerk of this Court at the time of filing of the Memorandum of *Amici Curiae* Alfred Smallwood, *et al.*, in Support of Emergency Application for Stay Pending Appeal). This result is exacerbated for minority groups, such as African Americans, because they tend to be poorer and less well educated than their white counterparts, and, consequently, tend to have lower levels of political participation. *See id.* at 9.

[6]Appellees do intimate, elsewhere in their brief, that any Congressional district that would re-elect the present incumbent of District 12 is necessarily so connected to the unconstitutional features of the 1992 plan as to be *per se* impermissible. They assert that the Congressman reelected from that district holds racially "polarizing view[s]" about which he testified in the 1994 *Shaw v. Hunt* trial, Br. at 12 n.19 and accompanying text, and they imply that only the election of a different Representative could fully cure the prior constitutional violation, Br. at 46-47. These arguments misrepresent Rep. Watt's views and his record, and they demean the

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thousands of *white and African-American* constituents, such as Appellant-Intervenors, who have returned him to office.

In the first place, the excerpt from Rep. Watt's trial testimony in Appellees' Br. at note 19 (quoting from the dissenting opinion in the trial court's ruling in *Shaw v. Hunt*), conflates a portion of one *question* with a portion of Rep. Watt's *answer*, torn from its appropriate context. Only Appellees' counsel referred to the "white community" – in his compound question. Rep. Watt's answer was not given in racial terms at all but focused on "compromising and walking the line between the business community and the community." The entire exchange is set out in the Appendix, *infra*, at pp. 1a-3a.

Moreover, as Appellees themselves recognize, Br. at 8 n.15, Rep. Watt (like other African-American Representatives in Congress who were originally elected from majority-black districts created following the 1990 Census) has now been re-elected from a majority-white district. The creation of these districts provided these Representatives with a crucial advantage of incumbency: the opportunity to overcome white voters' stereotypical expectations, as Rep. Watt did, by providing meaningful representation and effective constituent service to *all* of their districts' residents. These Members of Congress were thus enabled to overcome long-maintained patterns of white racial bloc voting and to win office in redrawn, now majority-white districts.

While this development is of course a welcome one, its significance should not be overstated. It does not in any way undercut the original necessity of creating these districts, which provided minority voters with their initial opportunity, equal to that of white voters, to elect candidates of their choice to Congress. As in other southern states, for example, prior to the 1992 redistricting that resulted in the creation of District 12, no African-American candidate had ever been elected to Congress from North Carolina in this century, even when candidates enjoyed the overwhelming support of African-American voters. Nor does it foreclose the possibility that such remedies may still be required to avoid minority vote dilution; whether candidates of choice of minority voters who do not have the advantages of incumbency described above will have a realistic opportunity to win election in majority-white districts, even in North Carolina, is presently unknown and can be determined only based upon a "searching practical evaluation of the past and present reality" of the political process in a specific jurisdiction,

at 19a (majority of court below states that "comparison of the 1992 District 12 and the present District is of limited value here").[7]

The school desegregation cases in fact support the current legal standard. In the school desegregation context, this Court has "articulated a three-part framework . . . to guide

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Thornburg v. Gingles, 478 U.S. 30, 45 (1986) (internal citation add quotation omitted). To the extent, therefore, that Appellees' mention of this extra-record development is intended to suggest that compliance with Section 2 should no longer be considered a compelling governmental interest, it is in direct conflict with this Court's precedents. *See, e.g., Shaw*, 517 U.S. at 914 (assuming without argument that "§ 2 could be a compelling interest"); *Miller*, 515 U.S. at 915 (race-consciousness in drawing district lines would not alone render a districting plan presumptively unconstitutional); *Bush*, 517 U.S. at 990, 992 (O'Connor, J., concurring).

[7]Appellees similarly argue that they are entitled to the benefit of the "presumption that 'current disparities are causally related' to" the prior constitutional violation, Br. at 22; *see Keyes v. School Dist. No. 1, Denver*, 413 U.S. 189, 201, 208, 213 (1973). But they never identify what "disparities" would give rise to the presumption, other than by referring to the creation of a district with a higher proportion of African-American voters than the State as a whole, *see* Br. at 46. This Court has expressly rejected such a redistricting standard. *See Lawyer*, 521 U.S. at __ ,117 S. Ct. at 2195 ("we . . . have never recognized similar racial composition of different political districts as being necessary to avoid an inference of racial gerrymandering in any one of them. Since districting can be difficult, after all, just because racial composition varies from place to place, and counties and voting districts do not depend on common principles of size and location, facts about the one do not as such necessarily entail conclusions about the other"). Moreover, the rule proposed by Appellees would be fundamentally contrary to this Court's decisions, which hold that States may recognize communities of minority voters so long as race does not predominate in fashioning a districting plan and, even if it does, so long as the plan is narrowly tailored to achieve a compelling state interest. *See Miller*, 515 U.S. at 920; *Bush*, 517 U.S. at 958-959, 976; *Abrams v. Johnson*, ___ U.S. ___, 117 S. Ct. 1925, 1933, 1936 (1997).

district courts in the exercise of their remedial authority." *Missouri v. Jenkins*, 515 U.S. 70, 88 (1995). As this Court stated in *Milliken v. Bradley*, 433 U.S. 267 (1977),

> In the first place, like other equitable remedies, the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation. . . . The remedy must therefore be related to 'the *condition* alleged to offend the Constitution. . . .' Second, the decree must indeed be *remedial* in nature, that is, it must be designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.' Third, the federal courts in devising a remedy must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution.

Id. at 280-81 (footnotes and citations omitted). In *Freeman v. Pitts*, 503 U.S. 467 (1992), this Court concluded that this inquiry should focus upon "'whether the [constitutional violator] ha[s] *complied in good faith* with the desegregation decree since it was entered, and whether the vestiges of past discrimination ha[ve] been eliminated *to the extent practicable*.'" *Id.* at 492 (quoting *Board of Education v. Dowell*, 498 U.S. 237, 249-50 (1991) (emphasis added). Indeed, "[t]he task is to correct, *by a balancing of the individual and collective interests*, the condition that offends the Constitution." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. at 15-16 (emphasis added). Far from calling present law into question, this Court's standard for analyzing school desegregation plans establishes a role for federal courts in such cases that is entirely consistent with a

federal court's duty in evaluating remedial redistricting plans. *See* Motion to Affirm or, in the Alternative, to Dismiss, of Appellee-Intervenors in *Hunt v. Cromartie*, No. 98-45 at 17-20.

In the end, Appellees' recitation is bereft of specific evidence from the record that could support the grant of summary judgment and that judgment could be sustained, if at all, only if the Court embraced Appellees' plea that it abandon long-standing precedents.[8]

II. On the Record Before It, the Court Below should have Determined Whether the 1997 Plan could be Justified under Strict Scrutiny

While Appellant-Intervenors continue to believe, as we have argued, that the court below erred in entering summary judgment in favor of Appellees based on its unsupportable conclusion that race predominated in the 1997 districting process, even if this Court were not to question that conclusion,

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[8]As part of their request that this Court alter its precedents, Appellees contend that defendants in this case bear the burden of proving that there is no causal relationship between the constitutional infirmities found by the Court in the 1992 Plan and the 1997 Remedial Plan. This, of course, is contrary to the well-settled law that in challenges to the constitutionality of a districting plan under the Fourteenth Amendment jurisprudence established by this Court in *Shaw v. Reno* and *Miller v. Johnson*, "[t]he plaintiff bears the burden of proving the race-based motive. . . ." *Shaw*, 517 U.S. at 905 (citation omitted). *See also Miller*, 515 U.S. at 916. This burden does not shift during the remedial phase of such a challenge. *See Scott v. United States*, 920 F. Supp. 1248 (M.D. Fla. 1996), *aff'd sub nom. Lawyer v. Department of Justice*, 521 U.S. 567 (1997). The rule is an application of the equally well-settled principle that in constitutional challenges, *plaintiffs* bear the burden of proof throughout the case. *See Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 277 (1986) (opinion of Powell, J., for the plurality); *id.* at 292-93 (O'Connor, J., concurring).

the judgment of the district court cannot stand. Having found that the legislature took race into account in a predominant fashion in drawing the plan, as we argued in our opening Brief at 40-41, the lower court should have considered whether a legally sufficient basis existed to justify that action and whether it was sufficiently narrowly tailored to accomplish that interest.

The record contains ample evidence to create triable issues on these questions.[9] The affidavits of Senator Cooper and Representative McMahan each stated clearly that "racial fairness" was considered by the General Assembly, as was the "[o]bligation[] to represent all of our constituents of all races and to comply with the Voting Rights Act," *see* NC. J.S. App. at 77a, 83a; *see also id.* at 120 (statement of Representative McMahan on floor of North Carolina House). The summary judgment record also indicates that, in creating the plan, the legislature was aware of North Carolina's long history of official discrimination against African-Americans and their exclusion from the political process due to state and private

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[9]Appellees assert that, once it had concluded that race predominated in the creation of the 1997 plan there was no need for the court below to have considered whether the plan could survive a strict scrutiny analysis, because the State's principal defense was that politics, not race, accounted for the configuration of the plan. While Appellees mischaracterize the State's argument as being "that no racial motive existed for the design of District 12," Br. at 43, in fact, the State and Appellant- Intervenors have consistently argued only that race was not the *predominant* motive for the plan. However, Appellees reject this Court's holdings that a districting plan is unconstitutional only if racial considerations *predominate* in its creation and the plan is not narrowly tailored to accomplish a compelling governmental objective. *See* Br. at 44 ("in claiming that the redistricting plan was primarily for protecting incumbents and maintaining partisan balance, appellants have made clear that *no* grounds exist for finding that District 12 could survive strict scrutiny"). *See supra* p. 3 n.2 and accompanying text.

action. Moreover, there was evidence from the Section 5 process that the State sought to "provid[e] minority voters a fair opportunity to elect representatives of their choice in at least two districts (Districts 1 and 12)," NC. J.S. App. at 64a, and that District 12 does afford African-American voters a fair chance to elect their candidate of choice. *See* NC. J.S. App. at 66a.

Thus, the State concealed neither its need to be racially fair when submitting a plan for review under Section 5 nor the fact that it has been on notice regarding its Section 2 obligations since *Gingles*. It is simply untrue that "nothing in this record even remotely suggests that the evidence before the [district] court raised any issue of fact or law as to strict scrutiny," Br. at 44, or that "[n]othing in the record suggests that the [Twelfth] district was created in response to a 'compelling governmental interest' or that it embodied 'narrow tailoring'." Br. at 10. *See* Brief of Appellant-Intervenors at 8-9, 25-26, 32-41.

Under these circumstances, even if the court below had been correct in finding that race predominated in the legislature's development of the 1997 plan, before that court determined to enjoin implementation of the General Assembly's plan, it should have pursued the strict scrutiny analysis to assure itself that federal court interference with State districting preferences was necessary. *See Miller v. Johnson*, 515 U.S. at 914-16. Its failure to do so, in the face of record evidence highly relevant to the strict scrutiny analysis, constituted an independent legal error warranting reversal.

CONCLUSION

For the foregoing reasons, as well as those contained in the Brief of Appellant-Intervenors, this Court should reverse the judgment of the district court and enter judgment for defendants. In the alternative, this Court should vacate the judgment of the district court and remand the case for trial.

Respectfully submitted,

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APPENDIX

APPENDIX

Excerpts from Trial Testimony

Shaw v. Hunt, No. 92-202-Civ-5-BR (E.D.N.C.)

April 4, 1994

pp. 998-1001

[MELVIN WATT, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS]

[CROSS-EXAMINATION]

[BY MR. EVERETT:]

[998]

Q. Now, in that same vein, have you stated at panel, which was videotaped, that I'm not sure that a black person representing a majority white district would have [999] had the freedom of voting against NAFTA?

A. Yes, I've said that.

Q. Is that still your opinion?

A. Yes. I mean, it's basically consistent with what I was saying before. If you represent inconsistent constituencies, it is more difficult to represent those inconsistent communities of interest.

And I expect, had I been representing more of the corporate interests, which is what you would have gotten in historical pattern of the way Congressional districts are drawn, I would have either had to change my view on that or I would have been out of step with the majority of my constituents on that issue and that's the context in which I made that statement.

Q. Did you, in the same context, say that it adds to the debate to be able to bring up a perspective without catering or having to cater to the business or white community?

A. Yes, sir, I made that statement. I can give you many examples of it. Most recently, this week, when I met with a banker. He pointedly asked me the question if comes down to voting my interests as a banker or voting what you perceive to be the communities of interest in your district and those two things are at odds with each other, I want you to tell me you are going to vote with me.

[1000] I looked at him and said, sir, I can't tell you that. I will tell you that I will consider your opinion, I will listen to you, I will allow you to persuade me, and if I believe that you are right, I will vote with you, with your interests.

But my interest, representing the constituency that I represent, and I would tell you, Mr. Everett, I would never have been able to make that statement in the context of the old 9th Congressional District. And so again, that's an example of the difficulty.

Now, I want to hasten to tell you that that doesn't mean that I don't have to compromise. I probably end up compromising and walking the line between the business community and the community a lot more than most people do, and I try to do it with integrity, and I try to do it as I believe I should do it.

But I would be in a completely different situation, in my opinion, if I represented a district like the old 9th and that's really what I was saying to you or in response to the question on direct, as to why I would not have run.

I consider myself a very principled person, much less so a political person in the sense that I am always trying to figure out the way the political winds are blowing. And representing a district that you are consistent with [1001] in your philosophies, allows you to be consistent in voting your conscience without buckling under or catering, as you said my statement said, to other interests that may not predominate in my district.

Q. Basically you seek to represent a constituency that's consistent with your particular view, is that it?

A. No, sir. I hope you don't misunderstand what I'm saying. I think I tried to articulate it as best I can. It's a lot more comfortable for any politician to represent a constituency that his or her personal opinions and views are consistent with.